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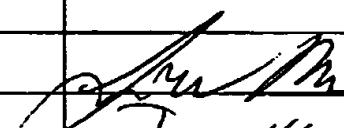
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/765,174	
	Filing Date	Herewith	
	First Named Inventor	Naimish, Richard J.	
	Group Art Unit	2837	
	Examiner Name	Lockett, K.	
Total Number of Pages in This Submission	5	Attorney Docket Number	Roh-N

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): <p style="text-align: center;">See Remarks section</p>
Remarks <p style="text-align: center;">ATTN: NANCY JOHNSON SENIOR PETITIONS ATTORNEY</p>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Thomas W. Hanson
Signature	
Date	Jun 14 04

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being transmitted via facsimile to the following number: <u>703 872 9306</u> addressed to: Commissioner for Patents, Washington, DC 20231 on this date: <u>June 14, 2004</u>	
Typed or printed name	Thomas W. Hanson
Signature	 Date <u>Jun 16 2004</u>

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JUN 18 2004

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of
Naimish, R.
Serial No. 09/765,174
Filed: 01/18/01
For: Guitar Bridge for Improved Sound Transfer

Group Art Unit: 2837
Examiner: Lockett, K.

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JUN 15 2004

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REQUEST TO RECONSIDER DENIAL
OF
PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant considers the present petition(s) to have been improperly denied for several reasons. Each of these is addressed individually below.

REJECTION OF PETITION UNDER 37 CFR 1.10

The Petitions Attorney has rejected both the original petition and the present petition on the grounds that they do not meet the requirements of 37 CFR 1.10. The attorney is apparently ignoring the fact that neither petition was filed under 37 CFR 1.10.

Section 1.10 of title 37 the code provides for correspondence to be "considered filed with the USPTO on the date of deposit with the USPS." To date, Applicant has not asked for the papers to be considered filed as of date of deposit, only that they be considered filed as of date of receipt, which was within the specified time frame. As such, the conditions of section 1.10 are irrelevant to both petitions. The information relating to Express Mail filing was supplied as supporting evidence to show that the response had been filed on a date corresponding to their documented receipt by the USPTO.

REJECTION OF PETITION UNDER 37 CFR 1.8

The Petitions Attorney has also stated that the supplied documentation is not persuasive under 37 CFR 1.8. Again, neither petition was filed under 37 CFR 1.8 so its criteria are not relevant.

As above, Applicant has not asked for the papers to be considered filed as of date of deposit, only that they be considered filed as of date of receipt, which was within the specified time frame. Section 1.8 clearly and explicitly states that where the criteria of section 1.8 are not met "The actual date of receipt will be used for all other purposes." To date, this is all that Applicant has asked for. The supplied documentation clearly show that the response was filed and received within the specified time period. Applicant had considered this to be sufficient basis for petition

While Applicant has not previously relied upon the protection afforded by section 1.8, Applicant firmly believes that the conditions of 1.8 have been met and that option will be exercised below.

REJECTION OF PETITION UNDER 37 CFR 1.137(A)

The Petitions Attorney has spent considerable time arguing that failure to comply with section 1.10 does not qualify as "Unavoidable" under 37 CFR 1.137 (a), pointing out that "... a 'reasonably prudent' person' would file papers or fees in compliance with 37 CFR 1.8 or 1.10..."

First, any discussion of whether delay was unavoidable or not is moot, because there was in fact no actual delay. The original petition was filed under 37 CFR 1.137 solely on the recommendation of the Petitions Attorney during a telephone call with Applicant's attorney. The rejection of the original petition resulted in Applicant's attorney further clarifying the correct process with Supervisory Examiner Robert Nappi in the art group where the application is pending. Based on this information the second petition was filed with the art group as a request to reconsider.

Second, as discussed above, the response was filed in compliance with 37 CFR 1.8, so the Examiners assertion is incorrect.

Third, the Examiner appears to be taking the position that only compliance with either 1.8 or 1.10 is sufficient for showing that the papers were filed. This is clearly incorrect. As discussed above, section 1.8 clearly states that in situations where its criteria are not met, "The actual date of receipt will be used...". This actual date of receipt has been established by the supplied documentation including USPS and USPTO records. As such there was no delay.

ASSERTION THAT THE SUPPLIED COPY CANNOT BE RELIED UPON AS A TRUE COPY

The Petitions Attorney is asserting that the provided copy can not be relied upon as a true copy of the original. The reasoning for this assertion is not clear to Applicant.

The Petitions Attorney states that the original amendment does not include the Express Mail mailing label number and then refers to "petitioner's admission" to support a statement that the supplied copy can not be relied on as a true copy. Applicant must assume that this refers to the statement that "The Express Mail number shown was not entered on the original transmittal, but was affixed to the file copy..."

As is clear from examining the submitted copy, the Express Mail number affixed to the copy is that label which separates from the Express Mail label when the protective layer is removed to expose the adhesive. This can occur only after the label has been prepared and is about to be attached to the mailing envelope. Per internal procedure, this label, showing the Express Mail number is retained for tracking purposes. To prevent it from being separated from the amendment, it is affixed to the file copy of the Transmittal Form at the time the mailing label is affixed to the envelope.

Applicant fails to see how this prevents the file copy from being a "true copy" of the original. None of the information entered on the form has been altered in any way. In Applicant's view, this is no different than recording a transmission date on a form filed by facsimile or adding a client identification number to the file copy to associate it with a particular file.

Applicant firmly believes, and asserts, that the supplied copy is a true copy of the original.

PETITION DOES NOT INCLUDE A STATEMENT OF PERSONAL KNOWLEDGE

The Petitions Attorney noted that the petition does not include a statement which attests on a personal knowledge basis of the previous timely mailing by Express Mail of the missing response. As the previous petitions had not been filed under a section (such as 1.8) which requires such a statement, none had been supplied. This will now be cured.

The undersigned attorney for Applicant attests that he has personal knowledge that the response in question was timely mailed by Express Mail, having personally prepared, addressed, and delivered the response to the US Postal Service and paid the required postage.

REQUEST TO RECONSIDER REJECTION OF PETITION

Applicant again asserts that the response was timely filed with the USPTO. The previously submitted documentation clearly supports a finding that the response was both filed and received within the specified time limit. In addition, the above statement as to personal knowledge of mailing also supports this finding.

Applicant respectfully requests that the prior decision to reject the present petition be withdrawn and that the petition be granted.

PETITION UNDER 37 CFR 1.8

Should the Petitions Attorney continue to refuse to grant the previous petition(s), Applicant hereby files a petition under 37 CFR 1.8 that the required response be considered timely filed as of the date of mailing.

The conditions of 37 CFR 1.8(a)(1) have been met: the original response was properly addressed, and deposited with the USPS with sufficient postage; and the correspondence included a certificate of mailing stating the date of transmission, signed by the person mailing the correspondence. As such, the original response should be considered timely filed under 37 CFR 1.8(a)

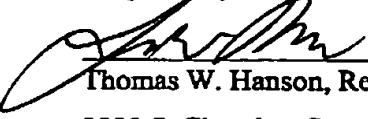
Further, the conditions specified in 37 CFR 1.8(b) for correspondence not received by the USPTO and the application held to be abandoned have been met: the Office has been informed of the previous mailing; an additional copy has been supplied (with both previous petitions); and a statement attesting on a personal knowledge basis to the previous timely mailing has been supplied (above).

As such, in the event that the previous decision is not withdrawn, Applicant respectfully requests that this petition be forwarded to the Group Director of the art group where this application is pending, as specified by MPEP section 512.

Applicant believes that this matter can be expeditiously resolved by either withdrawing the denial of the previous petition or granting the present petition under 37 CFR 1.8 and urges such action. Should any additional information be needed, please contact Applicant's attorney as listed below.

Respectfully submitted,

June 14 04
Date


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